No. 02-281

Supreme Court, U.S.
FILED
FEB 27 2003
CLERK

In The
Supreme Court of the United States

INYO COUNTY, a public entity; PHIL MCDOWELL, Individually and as District Attorney and DAN LUCAS, Individually and as Sheriff,

Petitioners,

v.

PAIUTE-SHOSHONE INDIANS OF THE BISHOP COMMUNITY OF THE BISHOP COLONY and BISHOP PAIUTE GAMING CORPORATION,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF FOR THE STATES OF NEW MEXICO, ARIZONA, MONTANA, AND WASHINGTON AS AMICI CURIAE IN SUPPORT OF RESPONDENTS IN PART

PATRICIA A. MADRID
Attorney General of
New Mexico
STUART M. BLUESTONE
Deputy Attorney General
GLENN R. SMITH
Special Counsel to the
Attorney General
*CHRISTOPHER D. COPPIN
Assistant Attorney
General
111 Lomas, NW, Suite 300
Albuquerque, New Mexico
87102
505-222-9000
Counsel for the State of New Mexico
**Counsel of Record*

[Additional Counsel Listed On Inside Cover]

BEST AVAILABLE COPY

TERRY GODDARD
Attorney General
State of Arizona
1275 West Washington
Avenue
Phoenix, Arizona 85007

MIKE MCGRATH
Attorney General of
Montana
Department of Justice
Justice Building
215 North Sanders
Helena, Montana
59620-1401

CHRISTINE O. GREGOIRE
Attorney General of
Washington
1125 Washington Street
P.O. Box 40100
Olympia, Washington
98504-0100

EUGENE I. ZAMORA
General Counsel
HILARY C. TOMPKINS
Deputy Counsel
BILL RICHARDSON
New Mexico Governor
State Capitol Building
490 Old Santa Fe Trail
Suite 400
Santa Fe, New Mexico
87501-2780

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
BRIEF OF AMICI CURIAE	1
INTEREST OF THE AMICI CURIAE	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
I. Indian Reservations Are Not Havens For Criminals	3
II. IGRA Gives States The Option To Assume Jurisdiction Over Indian Casinos Through The Compacting Process	6
CONCLUSION	7

TABLE OF AUTHORITIES

Page

CASES

Nevada v. Hicks, 533 U.S. 353 (2001).....3, 4

Benally v. Marcum, 89 N.M. 463, 553 P.2d 1270 (1976)..... 3

City of Farmington v. Benally, 119 N.M. 496, 892 P.2d 629 (Ct. App. 1995)..... 4

State v. Yazzie, 108 N.M. 677, 777 P.2d 916 (Ct. App. 1989) 3

STATUTES

25 U.S.C. Section 2701, et seq. ("IGRA")..... 2

25 U.S.C. Section 2702(2) 6

25 U.S.C. Section 2710(d)(3)(C)(i) 6

25 U.S.C. Section 2710(d)(3)(C)(ii) 6

Pub. L. No. 280, 67 Stat. 588..... 3

N.M.S.A. 1978, Section 29-1-11 4

N.M.S.A. 1978, Section 29-8-1 to 3..... 4

N.M.S.A. 1978, Section 29-13-2.1 4

Wash. Rev. Code §43.101.230..... 5

Wash. Rev. Code §43.101.315(1)(f) 5

BRIEF OF AMICI CURIAE

The States of New Mexico, et alia, respectfully submit their brief as amici curiae through their respective Attorneys General pursuant to Supreme Court Rule 37.4. The Amici States only address Petitioners' allegations of the impacts to state law enforcement efforts should the Court not reverse the Ninth Circuit Court of Appeals in this case.

INTEREST OF THE AMICI CURIAE

The Amici States have an interest in strengthening cooperative relationships between Indian tribes and States as governmental entities with separate and distinct sovereign interests. The Amici States prefer to cooperate with tribes and work together in a mutually respectful, government-to-government relationship. The Amici States disagree with the Petitioners' allegations that if State law enforcement agencies are not allowed to forcibly enter tribally-owned buildings under the authority of a search warrant, among other dire consequences, mass murderers and rapists will find refuge on hundreds of Indian reservations throughout America. Brief of Petitioners at 21-24. No legitimate government has an interest in becoming a sanctuary for criminals or criminal activity because that would only result in undermining the purpose of government – the protection of the common good through the enactment of laws and the enforcement of those laws.

In reality, many States and tribes work together to provide law enforcement for the mutual benefit of their citizens because States and tribes share adjacent lands, resources and citizens. In addition to agreements regarding the environment, resource conservation, taxation and

water rights, many States and tribes enter into agreements that establish their respective rights and the procedures each must follow to combat criminal activity that crosses tribal-state borders.

SUMMARY OF ARGUMENT

I. This Court's decision should not be premised upon the assumption that Indian lands will become havens of lawlessness if the Ninth Circuit Court of Appeals is not reversed. Amici States have not asserted unilateral authority to impose their criminal laws and procedures upon tribal governments in the past and have not experienced any resultant havens of lawlessness. State law enforcement has grown accustomed to the jurisdictional lines with respect to crimes committed in Indian country and fugitives in Indian country. States have been able to deal with federal and tribal law enforcement agencies through cooperative agreements that address common concerns of the respective governments.

Amici States have not found it necessary to use deadbolt cutters to clip locks off tribally owned buildings to obtain tribal records for law enforcement purposes. Instead, Amici States have enacted laws and policies that encourage cooperation between the States, the federal government and the tribes to address the States' law enforcement concerns. To date, this approach has been successful.

II. The Indian Gaming Regulatory Act 25 U.S.C. Section 2701, et seq. ("IGRA") authorizes an Indian tribe to have casino-style gaming only if the tribe enters into a

compact with the State. IGRA allows a State to include in tribal-state gaming compacts provisions for State jurisdiction to investigate and prosecute tribal casino employees to ensure the honesty of Indian gaming. Thus a process is available to States to negotiate terms with tribes that would have addressed the issues raised in this case.

ARGUMENT

I. Indian Reservations Are Not Havens For Criminals

As underscored in the Brief for the United States as Amicus Curiae in this case, most issues regarding criminal jurisdiction on Indian lands have been resolved. Brief for United States at 16-18. A State has jurisdiction to investigate and prosecute crimes committed on a reservation that exclusively involve non-Indians. The federal government and the tribes have jurisdiction over crimes involving an Indian perpetrator or victim. Under Public Law 280, some States have been given jurisdiction over crimes committed by or against Indians on Indian reservations. A State also has jurisdiction to prosecute tribal members for crimes committed off the reservation.

States like New Mexico have taken steps to insure Indian reservations do not become havens for criminals, regardless of the States' ability to actually enter Indian lands to enforce the law. Prior to this Court's decision in *Nevada v. Hicks*, 533 U.S. 353 (2001), New Mexico law enforcement officials were not allowed to enforce State criminal laws against Indians residing on an Indian reservation for crimes committed off-reservation. *Benally v. Marcum*, 89 N.M. 463, 553 P.2d 1270 (1976); *State v.*

Yazzie, 108 N.M. 677, 777 P. 2d 916 (Ct. App. 1989); *City of Farmington v. Benally*, 119 N.M. 496, 892 P.2d 629 (Ct. App. 1995).

Although this Court has expressed concern that a federal enclave not become an asylum for fugitives from justice, New Mexico did not experience such consequences prior to the *Hicks* decision. Rather, New Mexico set the groundwork for cooperation between the State and the tribes located within New Mexico to assure the State's interest in law enforcement was protected.

New Mexico law allows tribal police officers to be commissioned by the chief of the New Mexico State Police. *See* N.M.S.A. 1978, Section 29-1-11(B). Once commissioned, the tribal police officer is empowered to enforce state criminal laws on an Indian reservation. Section 29-1-11(A) and (C)(8). New Mexico also funds tribal police to enhance the efficiency and effectiveness of law enforcement in New Mexico if the tribe has commissioned its officers by the State. *See* N.M.S.A. 1978, Section 29-13-2.1(D). Tribal police attend the New Mexico Law Enforcement Academy for training to become certified by the State. Additionally, New Mexico law authorizes any State or local law enforcement agency to enter into a mutual aid agreement with an Indian tribe with respect to any law enforcement matter under the Mutual Aid Act. *See* N.M.S.A. 1978, Section 29-8-1 to 29-8-3.

Under these law enforcement provisions, New Mexico has entered into agreements with the Navajo Nation, Jicarilla Apache Nation, and Pueblo of Taos whereby the New Mexico State Police issue commissions to tribal police officers. Similar agreements for cross-deputization, law enforcement, and criminal prosecution purposes have been

entered into between counties and tribes, such as Sandoval County, Bernalillo County, McKinley County, Valencia County, Santa Fe County and the Navajo Nation and the Pueblos of Sandia, Pojoaque, Santa Ana, Isleta and Zia.

Similarly, Washington law authorizes the Washington State Criminal Justice Training Commission to offer training for Indian tribe officers and employees engaged in law enforcement activities. Wash. Rev. Code §43.101.230. State law provides that one of the thirteen members of the Board on Law Enforcement Training Standards and Education, which recommends programs and standards to the Commission, "must represent tribal law enforcement in Washington." Wash. Rev. Code §43.101.315(1)(f). State and tribal officials in Washington have met and signed agreements to strengthen tribal/state relations in order to "work together to preserve and protect our natural resources and to provide economic vitality, educational opportunities, social services and law enforcement that allow the governments to protect, serve and enhance their communities." *See, e.g.,* 1999 Agreement for "Institutionalizing the Government-to-Government Relationship in Preparation for the New Millennium," text available at http://www.goia.wa.gov/govtogov/agreement.html (February 25, 2003).

The result of the efforts by Amici States and various tribes has been the development of statutes and agreements with tribal law enforcement agencies that address the public safety concerns of each government. Amici States are proud of those efforts and do not want the Court to be misled by the Petitioners as to the state of law enforcement on Indian lands.

II. IGRA Gives States The Option To Assume Jurisdiction Over Indian Casinos Through The Compacting Process

The Bishop-Shoshone Indians of the Bishop Community ("Tribe") is a federally recognized tribe located on the Bishop Paiute Reservation in California. The Tribe owns the Bishop Paiute Gaming Corporation, which operates and manages a casino under a compact with the State of California under IGRA. Pet. App. 12a. This case concerns the efforts of a local law enforcement agency to use the State's criminal process against this tribally owned casino to investigate a crime committed off the reservation. Under IGRA, a State is free to seek criminal jurisdiction over the operations of a tribal casino if it so decides.

The declared policy of Congress in enacting IGRA is to provide a statutory basis for the regulation of gaming by Indian tribes adequate to shield it from organized crime and other corrupting influences to assure that the gaming is conducted fairly and honestly. *See* 25 U.S.C. Section 2702(2). To implement this policy, the State is authorized by IRGA to include provisions in a compact relating to the application of State criminal laws directly related to and necessary for the licensing and regulation of gaming on Indian lands. The State may also allocate to itself the criminal jurisdiction necessary for the enforcement of the State's criminal laws made applicable under the compact. *See* 25 U.S.C. Section 2710(d)(3)(C)(i) and (ii).

Thus, States have the ability to include in a compact a provision that prohibits the employment at tribal casinos of criminals or those engaged in criminal activities. IGRA authorizes States to include in a tribal-state compact State criminal jurisdiction over casino employees engaged in

criminal activities, to assure that Indian gaming is free from corrupting influences. Thus, under the facts of this case, the compacting process provides the avenue to address law enforcement concerns between the States and the tribes in a cooperative fashion.

CONCLUSION

In considering the decision of the Ninth Circuit Court of Appeals below, this Court should not be influenced by allegations that Indian reservations will become havens for criminals if States do not have the authority to impose their criminal process upon tribal governments for crimes committed off-reservation.

Respectfully submitted,

PATRICIA A. MADRID
Attorney General of the
State of New Mexico
STUART M. BLUESTONE
Deputy Attorney General
GLENN R. SMITH
Special Counsel to the
Attorney General
*CHRISTOPHER D. COPPIN
Assistant Attorney
General
111 Lomas, NW, Suite 300
Albuquerque, New Mexico
87102
505-222-9000
**Counsel of Record*

TERRY GODDARD
Attorney General
State of Arizona
1275 West Washington Avenue
Phoenix, Arizona 85007

MIKE MCGRATH
Attorney General of Montana
DEPARTMENT OF JUSTICE
Justice Building
215 North Sanders
Helena, Montana 59620-1401

CHRISTINE O. GREGOIRE
Attorney General of Washington
1125 Washington Street
P.O. Box 40100
Olympia, Washington 98504-0100

EUGENE I. ZAMORA
General Counsel
HILARY C. TOMPKINS
Deputy Counsel
New Mexico Governor
BILL RICHARDSON
State Capitol Building
490 Old Santa Fe Trail
Suite 400
Santa Fe, New Mexico 87501-2780